

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

MICHAEL ROBERTS	§	
VS.	§	CIVIL ACTION NO. 1:06-CV-272
MICHAEL D. HOOD, ET AL.	§	

**MEMORANDUM ORDER OVERRULING PETITIONER’S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Petitioner Michael Roberts, a prisoner previously confined in Beaumont, Texas, brought this petition for writ of mandamus to compel the respondents to produce documents requested under the Freedom of Information Act (FOIA).

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Petitioner contends that his administrative remedies are exhausted because he did not receive a timely response to his request for documents. Petitioner correctly notes that an individual may file a lawsuit if the agency fails to respond to a request for

records within the statutory time limit. 5 U.S.C. § 552(a). However, if the agency responds before the lawsuit is filed, even if the response is untimely, the individual must appeal the decision through the administrative process before filing a lawsuit. Because petitioner received a response from the Regional Director before he filed this lawsuit, he was required to appeal the decision of the Regional Director before he filed this case.


Petitioner also argues that he could not appeal because he did not receive the Regional Director's response until the time for appeal has expired. However, petitioner made no effort to appeal. Given the circumstances, it is possible that petitioner would have been granted an extension of time to appeal. Even if the appeal was rejected as untimely, petitioner's request for records would have been exhausted because it would have been presented to the head of the agency for review. Because petitioner made no attempt to appeal, his request for records is not exhausted.

Finally, mandamus relief is not appropriate. Petitioner has not demonstrated that he has a clear and indisputable right to relief. In addition, petitioner has not demonstrated that there are no other adequate remedies. Petitioner could have appealed the Regional Director's decision, but chose to forego the appeal and file this lawsuit. Therefore, after careful consideration, the court concludes the objections are without merit.

**ORDER**

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

**SIGNED** this the **28** day of **April, 2008**.

  
Thad Heartfield  
United States District Judge